

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TITAN INDEMNITY COMPANY,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF NORRISTOWN,	:	
NORRISTOWN POLICE DEPARTMENT,	:	
ROBERT SOBECK, and	:	
CLAUDE LACOMBE,	:	
Defendants.	:	NO. 96-5654
Newcomer, J.		August , 1997

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the exhibits on file in this case and the arguments of counsel, this Court makes the following findings of fact and conclusions of law.¹

1. Plaintiff Titan Indemnity Company filed the instant declaratory judgment action, pursuant to 28 U.S.C. § 2201, seeking a declaration from this Court that it has no obligation to furnish insurance coverage to defendants in connection with the lawsuit pending in the United States District Court for the Eastern District of Pennsylvania entitled Golson, et al. v. Norristown, et al., Civil Action No. 96-1399.

1. The parties in this action requested, and the Court agreed, that the Court decide this case based on the exhibits on file and the arguments of counsel, which are presented in various motions and responses thereto.

2. Defendant City of Norristown ("City")² submitted an application for insurance to Titan Indemnity Company ("Titan") on September 18, 1995. (See, Ex. A to Defs.' Mot. for Summ. J.)

3. Thereafter, Titan issued Law Enforcement Officers' Liability Policy #20-PL-02517 (the "Policy"), which applies to "damages for personal injury or property damage, caused by an occurrence, for which an insured is responsible, anywhere in the world, provided the original suit for such damages is brought within the United States of America, its territories or possessions, Puerto Rico or Canada." (See, Policy, Part II, Section B, attached as Ex. A to Compl. for Declaratory J.)

4. The Policy took effect January 1, 1996 and provided coverage through January 1, 1997. (See, Policy Declarations, Item 2, attached as Ex. A to Compl. for Declaratory J.)

5. The Policy also included retroactive coverage from January 1, 1993. (See, Endorsement Number 001, attached as Ex. A to Compl. for Declaratory J.)

6. The retroactive coverage, however, expressly did not apply to any personal injury or property damage that occurred after the retroactive date if, prior to the effective date of the Policy, the insured "had a reasonable basis to believe that the

2. The Complaint names as a defendant the "City of Norristown," and plaintiff refers to said defendant as such in all of its filings. Defendants, on the other hand, refer to that defendant as the "Borough of Norristown." Because, however, defendants have not moved to amend the caption of this action on the ground that the defendant properly is named the "Borough of Norristown," this Court refers to the defendant throughout this Order as the City of Norristown, or the City.

incident or occurrence might result in a claim or suit." (See, Endorsement Number 001, attached as Ex. A to Compl. for Declaratory J.)

7. In response to a question on the insurance application form filled out by the City, the City stated that it did not have knowledge of any incidents, accidents or occurrences that might result in a claim. (See, Ex. A to Defs.' Mot. for Summ. J., at 3.)

8. On February 22, 1996, a wrongful death action was filed in the United States District Court for the Eastern District of Pennsylvania against the City of Norristown, the Norristown Police Department, Officer Robert Sobeck, and Officer Claude LaCombe in connection with the death of Micus Golson on February 22, 1994 (the "Golson action").

9. Officers Sobeck and LaCombe had shot and killed Mr. Golson on February 22, 1994 during the course of an arrest.

10. Mr. Golson was African-American, Officer Sobeck is caucasian, and Officer LaCombe is Mexican, in part.

11. The Montgomery County District Attorney's office subsequently investigated the killing and cleared the defendant officers of any wrongdoing.

12. The killing sparked a storm of protest from the African-American community against the City and, in particular, against the City police department. (See, Deposition Testimony of Anthony A. Biondi, City Administrator, attached as Ex. A to pl.'s Mot. for Summ. J., ("Biondi Dep.") at 6, 15-16, 18;

Deposition Testimony of Timothy Woodward, Montgomery County Assistant District Attorney, attached as Ex. A to pl.'s Mot. for Summ. J., ("Woodward Dep.") at 25-26, 28.) The African-American community was very concerned about the police officers' use of deadly force. (See, Woodward Dep. at 28; Biondi Dep. at 16.)

13. The killing of Mr. Golson was the only killing to have taken place in the City at the hands of the City police department during the Policy's retroactive coverage period. (See, Biondi Dep. at 18; Woodward Dep. at 19-20.)

14. No City representative was ever told whether or not Mr. Golson's family would file a wrongful death claim on Mr. Golson's behalf.

15. Pennsylvania has a two-year statute of limitations period for wrongful death suits. See, 42 Pa. Cons. Stat. Ann. § 5524.

16. The City advised Titan of the Golson wrongful death action and requested coverage under the Policy.

17. Titan denied the request.

18. Titan asserts that the Golson action does not fall within the retroactive coverage under the Policy because the City "had a reasonable basis to believe that the [Golson] incident . . . might result in a claim or suit" and, thus, the incident is excluded from coverage under Endorsement Number 001. (See, Endorsement Number 001, attached as Ex. A to Compl. for Declaratory J.)

19. Defendants, on the other hand, contend that the Golson action does fall within the retroactive coverage under the Policy because the City of Norristown did not "ha[ve] a reasonable basis to believe that the [Golson] incident . . . might result in a claim or suit" and, thus, the incident is not excluded from coverage under Endorsement Number 001. (See, Endorsement Number 001, attached as Ex. A to Compl. for Declaratory J.)

20. This Court concludes that the City of Norristown did "ha[ve] a reasonable basis to believe that the [Golson] incident . . . might result in a claim or suit" because the killing sparked a storm of protest in the community, the killing was the only one to have taken place in the City at the hands of the City police department during the Policy's retroactive coverage period, no City representative was ever told that Mr. Golson's family would not file a wrongful death action on Mr. Golson's behalf, and the statute of limitations period for a wrongful death action on Mr. Golson's behalf would not expire until February 22, 1996. (See, Endorsement Number 001, attached as Ex. A to Compl. for Declaratory J.) Thus, the incident is excluded from coverage under Endorsement Number 001. (See, Endorsement Number 001, attached as Ex. A to Compl. for Declaratory J.)

21. Accordingly, this Court will enter judgment in favor of plaintiff and against defendants and declare that plaintiff has no obligation under Law Enforcement Officers' Liability Policy #20-PL-02517 to furnish insurance coverage to defendants in connection with the lawsuit pending in the United States District

Court for the Eastern District of Pennsylvania entitled Golson,
et al. v. Norristown, et al., Civil Action No. 96-1399.

22. An appropriate Order follows.

Clarence C. Newcomer, J.

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Plaintiff,	:	
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CITY OF NORRISTOWN,	:	
NORRISTOWN POLICE DEPARTMENT,	:	
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CLAUDE LACOMBE,	:	
Defendants.	:	NO. 96-5654

O R D E R

AND NOW, this day of August, 1997, after consideration of the exhibits on file in this case and the arguments of counsel, and consistent with the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that JUDGMENT IS ENTERED in favor of plaintiff and against defendants. It is further ORDERED that plaintiff has no obligation under Law Enforcement Officers' Liability Policy #20-PL-02517 to furnish insurance coverage to defendants in connection with the lawsuit pending in the United States District Court for the Eastern District of Pennsylvania entitled Golson, et al. v. Norristown, et al., Civil Action No. 96-1399.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.